was not compelled to recognize sovereign immunity in cases that did not fall within these categories.

Although the federal courts have been reluctant in the past to apply the doctrine of the "Tate Letter" to permit attachment of a foreign country's assets,[37] the State Department now has expressed the view that attachment is permissible within the confines of its current view of sovereign immunity.[38] Thus, a foreign government is not immune from attachment of its property within the state for the purpose of obtaining in rem or quasi-in-rem jurisdiction. However, it should be noted that the State Department still adheres to the view that the property of a foreign sovereign is immune from execution to satisfy a judgment, even when the judgment is obtained in an action in which there is no immunity from suit.[39] As a result, the attachment of the

state doctrine to make a determination on the merits giving effect to the principles of international law in a case in which a claim of title or other right to property is asserted by any party including a foreign state * * * based upon (or traced through) a confiscation or other taking * * * in violation of the principles of international law * * *." The statute contains certain exceptions to this rule including a provision that it is inapplicable to any case in which the President determines that application of the act of state doctrine is required by the foreign policy interests of the United States and a suggestion to this effect is filed on his behalf with the court. The statute is popularly known as the "Hickenlooper Amendment" and was held constitutional in Banco Nacional de Cuba v. Farr, C.A.2d, 1967, 383 F. 2d 166, certiorari denied 88 S.Ct. 1038, 390 U.S. 956, 19 L.Ed.2d 1151.

See also

Bleicher, The Sabbatino Amendment in Court: Bitter Fruit, 1968, 20 Stan.L.Rev. 858.

Edwards, The Erie Doctrine in Foreign Affairs Cases, 1967, 42 N.Y. U.L.Rev. 674.

Evans, Judicial Decisions, 1968, 62 Am.J.Int'l L. 165.

Note, Act of State Doctrine, 1967, 8 Harv.Int'l L.J. 357.

37. Attachment

The Tate Letter has no effect on the customary rule that the property of a foreign sovereign is free from attachment. New York & Cuba Mail S. S. Co. v. Republic of Korea, D.C.N.Y.1955, 132 F.Supp. 684.

Waiver of immunity as to attachment

Loomis v. Rogers, C.A.1958, 254 F.2d 941, 103 U.S.App.D.C. 84, certiorari denied 79 S.Ct. 611, 359 U.S. 928, 3 L.Ed.2d 630.

38. Attachment appropriate

See letter from Luftus Becker, Legal Advisor to the State Department, to Attorney General William Rogers, quoted in Stephen v. Zivnostenska Banka, 1961, 222 N.Y.S.2d 128, 134, 15 A.D.2d 111, affirmed 1962, 186 N.E.2d 676, 235 N.Y.S.2d 1, 12 N.Y.2d 781.

39. Execution prohibited

"The Department is of the further view that, where under international law a foreign government is not immune from suit, attachment of its property for the purpose of obtaining jurisdiction is not prohibited. * * * But property so

property of a foreign sovereign may be of limited usefulness as the basis of quasi-in-rem jurisdiction in a suit against a foreign government or one of its agencies.

Unfortunately, the service of process procedures in the federal rules have not been modernized to take account of the marked shift in this country's attitude toward the sovereign immunity of foreign governments. Curiously, the extensive 1963 amendments to Rule 4, although they were designed to modernize federal service of process practice and take account of the significant movements in the field of jurisdiction during recent decades, did not make any attempt to fill this gap in the rules. Even the addition of Rule 4(i),[40] which authorizes alternative methods of service upon parties in foreign countries, only seeks to accommodate the interests of foreign governments when service is attempted within their boundaries and does not purport to deal with service on a foreign government itself. As a result of the perpetuation of this lacuna, the federal courts have experienced considerable difficulty in developing a method for serving foreign sovereigns in cases in which jurisdiction may properly be asserted.

A number of possible procedures for effecting service on foreign governments or their agencies have been suggested by the courts. If the foreign government or agency has an office or agents within the jurisdiction, it might be regarded as one of the organizations that may be served pursuant to Rule 4(d) (3). Under these circumstances, the rule would permit service to be made upon an officer, a managing or general agent of the organization, or upon any other agent authorized by appointment or by law to receive process.[41] The logic of this view indicates that

attached to obtain jurisdiction over the defendant government cannot be retained to satisfy a judgment ensuing from the suit because * * * the property of a foreign sovereign is immune from execution even in a case where the foreign sovereign is not immune from suit." Letter from Luftus Becker, Legal Advisor to the State Department, to Attorney General William Rogers, quoted in Stephen v. Zivnostenska Banka, 1961, 222 N.Y.S.2d 128, 134, 15 A.D.2d 111, 116, affirmed 1962, 186 N.E.2d 676, 235 N.Y.S.2d 1, 12 N.Y.2d 781.

See also

Bishop, General Course of Public International Law, 1965, Academie De Droit International, Recueil Des Cours II, 152, 325.

New York & Cuba Mail S. S. Co. v. Republic of Korea, D.C.N.Y.1955, 132 F.Supp. 684, 687 n. 7.

40. Rule 4(i)

This rule is discussed in §§ 1133–36.

41. Relevance of Rule 4(d) (3)

Rule 4(d) (3) is concerned with service upon corporations, partnerships, and other unincorporated as-